

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re establishment of)
intrastate implementation)
requirements governing federally)
mandated deregulation of local)
exchange company pay phones)

Docket No. 970281-TL

Filed: May 16, 1997

RESPONSE OF SPRINT-FLORIDA, INCORPORATED TO MCI'S PETITION ON
PROPOSED AGENCY ACTION

COMES NOW Sprint-Florida Incorporated ("Sprint-Florida") and, pursuant to Rule 25-22.039, F.A.C., files this response to MCI's Petition on Proposed Agency Action. In support, Sprint-Florida states as follows:

1. The Respondent is:

Sprint- Florida Incorporated
555 Lake Border Drive
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ACK All correspondence and pleadings should be served on:

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LEG 2 2. Sprint-Florida is only a party in docket 970281-TL and its response is limited to that
LIN dockets and the issues therein. The basis for Sprint-Florida's response to the Petition is that the
OPC relief requested is based, in part on an erroneous assumption regarding the status of any Federal
RCH mandate from the Federal Communications Commission (FCC). As set out in MCI's Petition, the
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FPSC-RECORDS/REPORTING

Florida Public Service Commission ("Commission" or "PSC") issued Order PSC-97-0358-FOP-TP on March 31, 1997. Therein, the Commission, among other things, considered BellSouth's proposal to remove any pay phone subsidy from Business Rotary Service. In denying MCI's request that the Commission require any subsidy to be removed specifically from the CCL (Carrier Common Line) access element and, fully cognizant of the language cited now by MCI,¹ the Commission denied MCI's proposal and stated:

Upon consideration, we find that a LEC must make rate reductions to the extent necessary to eliminate any intrastate pay phone subsidy. We will not specify particular services or elements where LECs may make rate reductions.

Order No. PSC-97-0358-FOP-TP at 6.

3. The Commission was well aware of the federal requirements in discharging any obligations it has under 47 U.S.C. 276(b)(1)(B) and the FCC implementation requirements issued under FCC Orders 96-388 and 96-439. In that regard the Commission stated at p. 4 that:

It is our responsibility to determine what actions are necessary to eliminate any intrastate subsidies associated with the LECs' pay phone operations.

Clearly MCI has read far more of a Federal mandate into the FCC order than is warranted under the circumstances. Congress left it up to the FCC to "take all actions necessary" to prescribe regulations effecting the removal of any pay phone subsidies. In issuing Orders 96-388 and 96-439, the FCC discharged that obligation under the act and required the states to make the determination. No further requirement was imposed on the states. No further guidance was given.

¹The very language cited by MCI in Paragraph 186 of FCC Order 96-388 as a basis for the commission having allegedly "abdicated" its responsibility is included on p. 2 of Order PSC-97-0358-FOP-TP.

4. In discharging any federally mandated obligation, the Florida Commission has determined the extent of PSC oversight in the removal of the pay phone subsidy. Correctly discerning that the important issue is the removal of the subsidy itself, the Commission established guidelines for the evaluation of the subsidy removal and declined to make the detailed level of further "determination" that MCI believes is required. More to the point, the key to the intent behind the context of the language included in the FCC orders, is the FCC's statement in Paragraph 193 of Order 96-439 (Order on Reconsideration) that:

Because parties did not submit state-specific information regarding the intrastate rate elements that recover pay phone costs, the Report and Order required that states must determine the intrastate elements that must be removed to eliminate any intrastate subsidies within this time frame.

[Emphasis added.]

5. The context of the Order is that the states "must" determine the issue because the FCC did not have the state-specific information. The FCC recognized that the State Commissions were the best suited to evaluate the state-specific needs in removing subsidies. Clearly, not all states' rates were set with the same rate-setting goals in mind. The thrust of the FCC order appears to be more in the sense of the states being better suited to making the determination required at the state level.

6. The discussion at the March 18 agenda conference indicated that the Commissioners gave serious consideration to whether it was possible to identify the specific elements being subsidized. The Commission was advised it was not possible to identify the specific sources. Furthermore, the Commission was unpersuaded that the FCC was actually mandating specific element-by-element state rate making determinations be made. Section 276(b)(1)(B) does not require as much and it is not reasonable to assume that the FCC wished to intrude into the state commission prerogative beyond the level that Order PSC-97-0358-FOF-TP recognizes.

7. Sprint-Florida takes no position on the substantive issues raised with respect to BellSouth. Sprint-Florida has filed a tariff in compliance with 47 U.S.C. 276(b)(1)(B), FCC Orders 96-388 and 96-439 and Order PSC-97-0358-FOF-TP. The filing was effective on April 15, 1997 and reduces MABC intraLATA switched access by a net amount of \$1.5 million. The result is that the subsidy has been removed consistent with the Florida Public Service Commission's determination regarding removal of pay phone subsidies on the intrastate side. Sprint-Florida's tariff filing is in effect and no objection and request for hearing was filed within the required 21 day period.

8. The Commission should not entertain MCI's protest in Docket No. 979281-T.L. to the extent that it seeks a reevaluation of the Commission's chosen method of requiring subsidies to be removed. To the extent that the Commission finds that MCI has raised a question of law regarding the method of implementing Section 276 of the federal Act, Sprint-Florida requests that an expedited briefing schedule and decision on that issue be established so that the fact-specific issues relating to BellSouth and GTE do not slow down the issuance of a final order on the generic question of what type of Commission "determination" "must" be made.

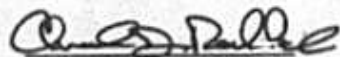
9. Sprint-Florida believes that a quick resolution is important because under state law, the determination in Florida is made by the tariff approval process. No one filed a timely objection to Sprint-Florida's tariffs.² Therefore, the determination has been made as to Sprint-Florida as a matter of law. Because of MCI's protest of the order covering three dockets in which are mixed company-specific, BellSouth and GTE issues with the generic statement in Docket 970281-TL, there is an unnecessary uncertainty regarding the issue of and required Commission action. Preferably, the Commission should find that MCI cannot raise, with respect to Sprint-Florida at

² MCI has not filed a protest of the Sprint-Florida tariff filing made on March 31, 1997. In its Petition MCI specifically states that the protest "is filed as to BellSouth Telecommunications, Inc. (BellSouth) and GTE Florida Incorporated (GTEFL)". Furthermore, MCI specifically requests that only the BellSouth and GTE tariffs be suspended and that the MCI-requested determination be made as to those reductions only.

least, the issue of whether the determination is consistent with the requirements of the FCC orders.

WHEREFORE, for the reasons stated above, Sprint-Florida respectfully requests that the Commission decline to entertain MCI's request that the Commission take action in Docket 970281-TL that would purport to affect the "determination" that has occurred by the state process that has yielded effective tariffs filed in compliance with 47 U.S.C. 276(b)(1)(B). The Commission should affirm that it has made its determination regarding the removal of pay phone subsidies. Alternatively, Sprint-Florida requests that the Commission make it clear that any such determination has been made with respect to Sprint-Florida since no timely objections have been filed regarding the Sprint-Florida tariff filing.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE
DOCKET NO.**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 16TH day of MAY, 1997 to the following:

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